

As a resident of the Southern Walk neighborhood in Broadlands, Virginia (20148), I believe I am subject to the very sort of exclusive video-service and bulk-billing contract that the Commission is concerned about, and I would like to enter the following comments:

1. When I purchased my single-family home in 2003 (settlement in 2004), I signed an agreement to obtain basic telecom services (local telephone, high-speed internet, and cable TV) from the Southern Walk Homeowners Association (SWHOA), which has an exclusive contract with the telecom provider, OpenBand LLC. Note that SWHOA is not a traditional HOA; it exists solely to administer the telecom contract. This arrangement was marketed as a selling point for this community. What was not disclosed to the buyer, however, was the fact that SWHOA's exclusive contract with OpenBand would likely be in effect for over twice as long as most of us would be paying our mortgages (potentially 75 years). I cannot say whether knowledge of this would have prevented my own home purchase, but it certainly would have made me wary.
2. Another important point not obviously disclosed to the buyer is that, while residents are captive to the SWHOA agreement, the builder (Van Metre Homes) receives 8% of the revenue collected by SWHOA for basic telecom services, and 12% of the revenue collected by OpenBand for premium services. Although not directly related to the issue the Commission is considering, SWHOA may remain under builder control ('Declarant control') for twenty years past the date of last recordation in Southern Walk. During this declarant control period, the SWHOA has sole authority to approve rate increases proposed by OpenBand. Given that the builder, through majority representation on SWHOA, has authority to approve rate increases even while receiving a percentage of revenue collected on those rates, it seems that a clear conflict of interest is present. At very least, the situation is stacked very much in favor of the developer, and very much against the homeowner.
3. Both OpenBand and the builder have stated that the potentially 75-year contract (the existence of which was not readily exposed to the buyer) was necessary to ensure that OpenBand could recoup the cost of its initial investment in building the telecom network in Southern Walk. I cannot believe that it must take this long to recoup this investment. Large telecom companies make a considerable investment in wiring their service area with absolutely no guarantee that residents in that area will purchase their services. OpenBand, however, has exactly that guarantee.
4. OpenBand has stated in its own comments to the Commission regarding this issue, that the ruling being considered would preclude or deter entry into the video marketplace of companies offering innovative and flexible new broadband facilities and service packages. Yet, OpenBand's contract with SWHOA does precisely that for Southern Walk residents, for the next 60 years or more.
5. OpenBand has stated in its own comments to the Commission regarding this issue, that exclusive contracts 'may increase market competition.' Again, this is pure folly. Within the market being served

by OpenBand, there is no competition (aside from satellite-based services, which are specifically disqualified by OpenBand's exclusive contract as 'comparable providers' for the purpose of rate-setting). There will be no competition for the duration of the exclusive contract. This might be reasonable if the contract period were shorter, but this contract locks out competition for 75 years (over 60 years remaining). OpenBand also argues that its customer base does not constitute a substantial percentage of the population in the Northern Virginia area, and therefore should not be subject to the ruling considered. Again, regardless of market size, OpenBand's customers are completely captive for the duration of the exclusive contract. Although OpenBand claims no market power, in fact, it has sole market power over its entire customer base.

6. OpenBand has stated in its own comments to the Commission regarding this issue, that exclusive contracts may 'provide benefits to Consumers, Consumer Groups.' Again, I cannot see how restricting consumer choice provides any benefits to consumers. OpenBand claims that developers or builders can consummate negotiations on behalf of consumer groups for the highest quality services at reduced prices. Contrary to this, OpenBand's services have been priced very high relative to quality. Each year, OpenBand seeks to increase their price, while offering little, if any, improvement in quality. This while more homes are sold, which should tend to drive telecom prices down, not up. Furthermore, OpenBand's exclusive contract is quite vague in areas of performance standards, quality of service, etc.

7. OpenBand has stated in its own comments to the Commission regarding this issue, that any restriction should be 'limited to service providers with market power.' OpenBand would claim that it has no market power, but as stated above, it has absolute market power in its service area, with no terrestrial competition. Grandfathering existing contracts out of any potential restriction would run sharply against consumer choice. I strongly urge the Commission to apply any potential restriction to existing contracts, particularly those of as long a term as OpenBand's.

8. I strongly urge the Commission to regard exclusive telecom contracts as anti-competitive and not in the consumers' best interest. I also urge the Commission to regard neighborhoods such as Southern Walk similarly to MDUs; the precise form of dwelling is not important to this matter -- whether apartment, townhome, or single-family, we homeowners are subject to the same exclusive agreement.